



APPLICATION ACCEPTED: December 5, 2011
DATE OF PUBLIC HEARING: February 15, 2012
TIME: 9:00 a.m.

County of Fairfax, Virginia

February 8, 2012

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2011-MV-104

MOUNT VERNON DISTRICT

APPLICANT: Robert Dunn

OWNERS: Robert and Tracy Dunn

LOCATION: 8514 Culver Place, Alexandria 22308

SUBDIVISION: Waynewood

TAX MAP: 102-4 ((5)) (11) 14

LOT SIZE: 10,641 square feet

ZONING: R-3

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSAL: To permit a reduction to minimum yard requirements based on an error in building location to permit an addition to remain 8.0 feet from the side lot line and an accessory storage structure to remain 4.0 feet from the side lot line and 2.4 feet from the rear lot line

A copy of the BZA's Resolution setting forth this decision will be mailed within five (5) days after the decision becomes final.

O:\bcho00\SP\Feb 15 - SP 2011-MV-104 (Dunn)\final_staff_report.doc

Brenda J Cho

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.**

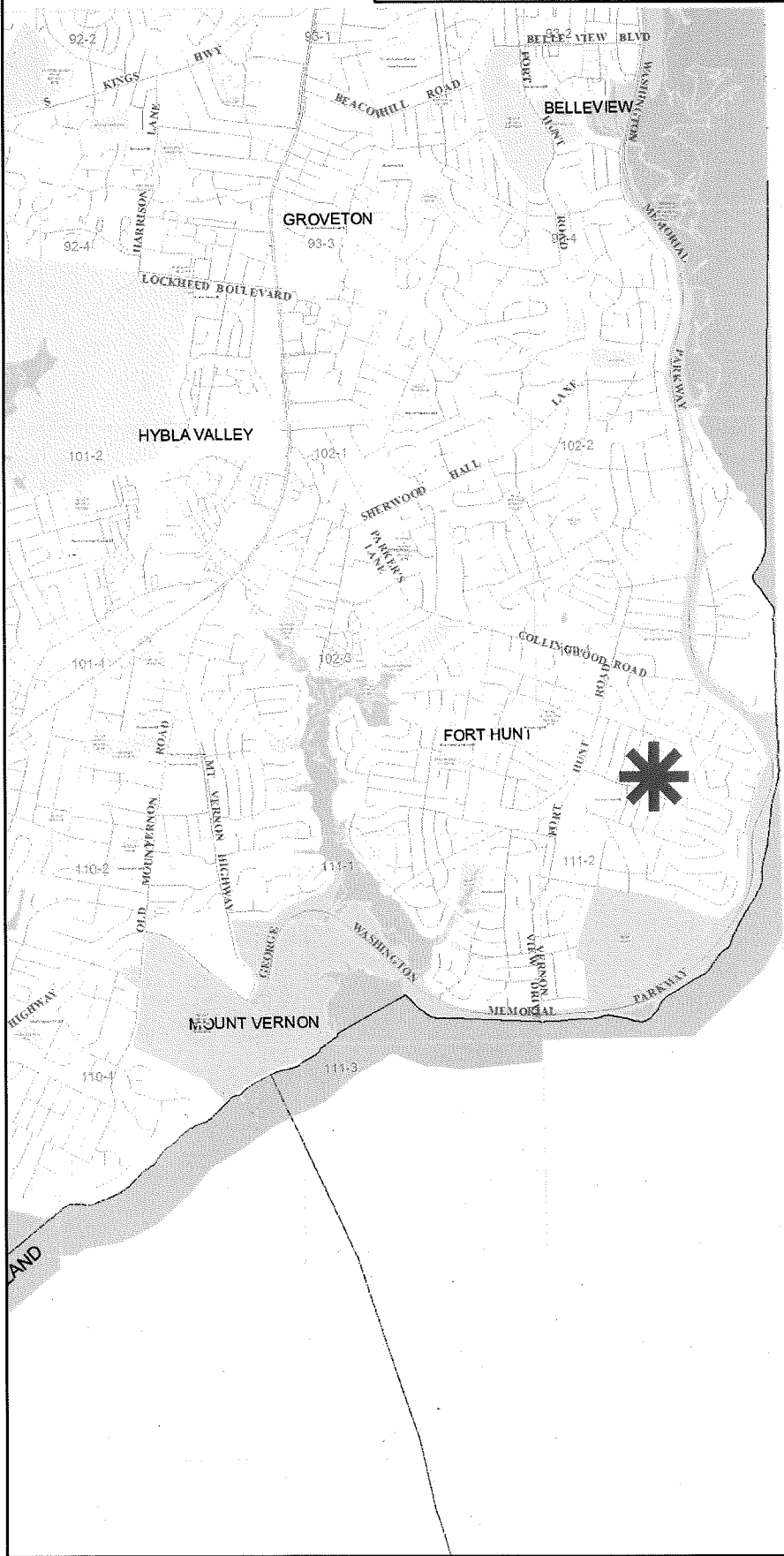


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

SP 2011-MV-104

ROBERT DUNN

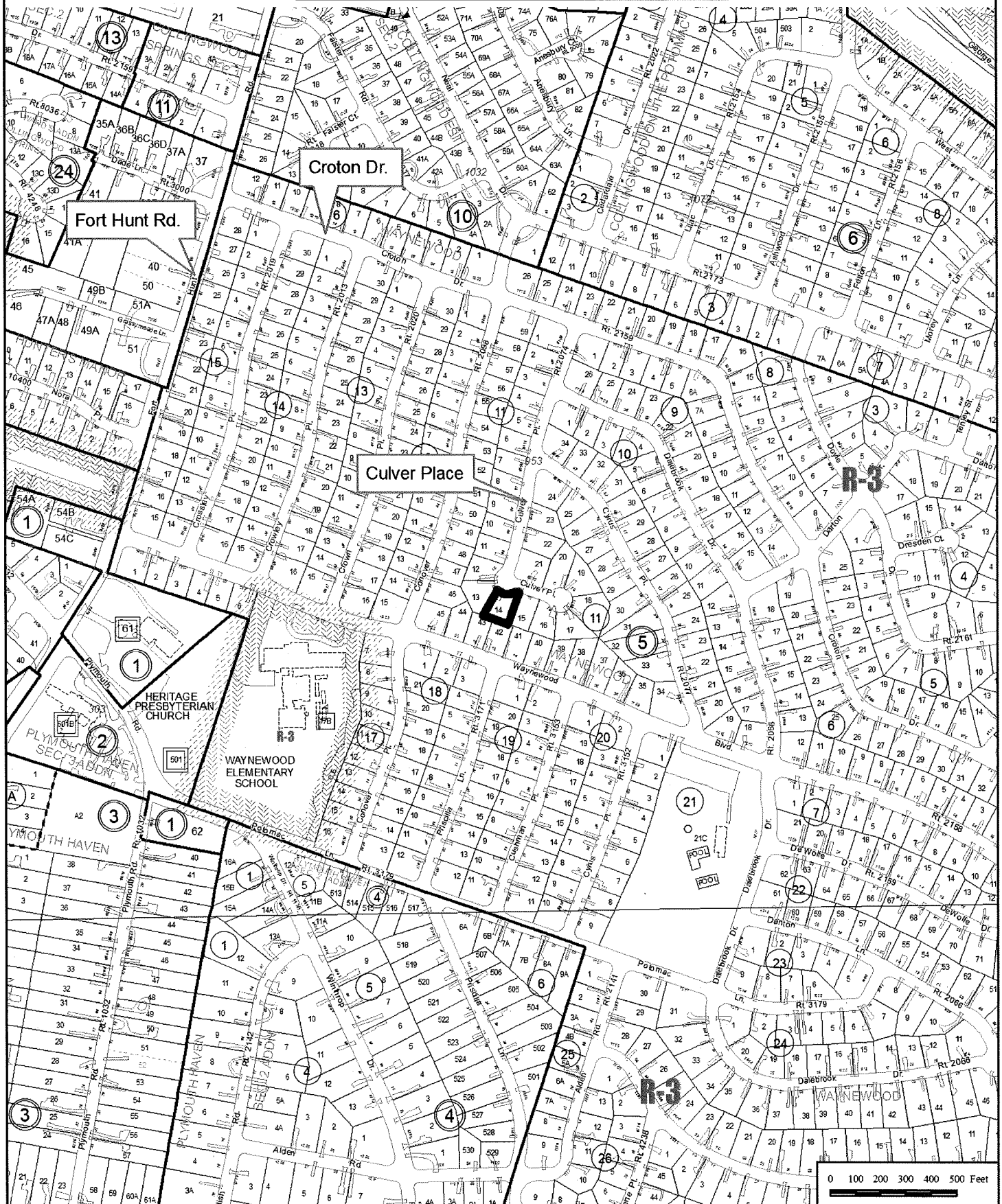


0 1,000 2,000 3,000 4,000 Feet

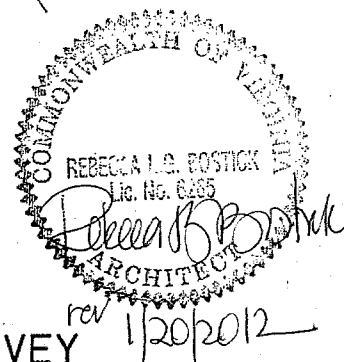
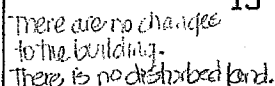
Special Permit

SP 2011-MV-104

ROBERT DUNN



2. LTD. - THIS IS A SERVICE DOCUMENT AND IS VALID FOR SIX MONTHS FROM DATE ISSUED.

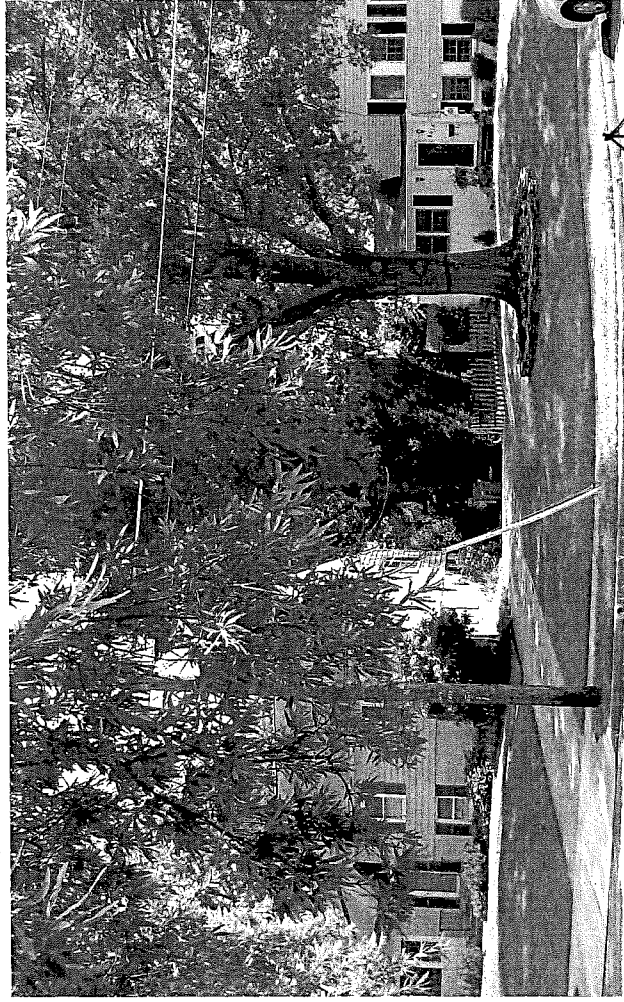


WAYNEWOOD

DATE: AUGUST 29, 2003

W14114

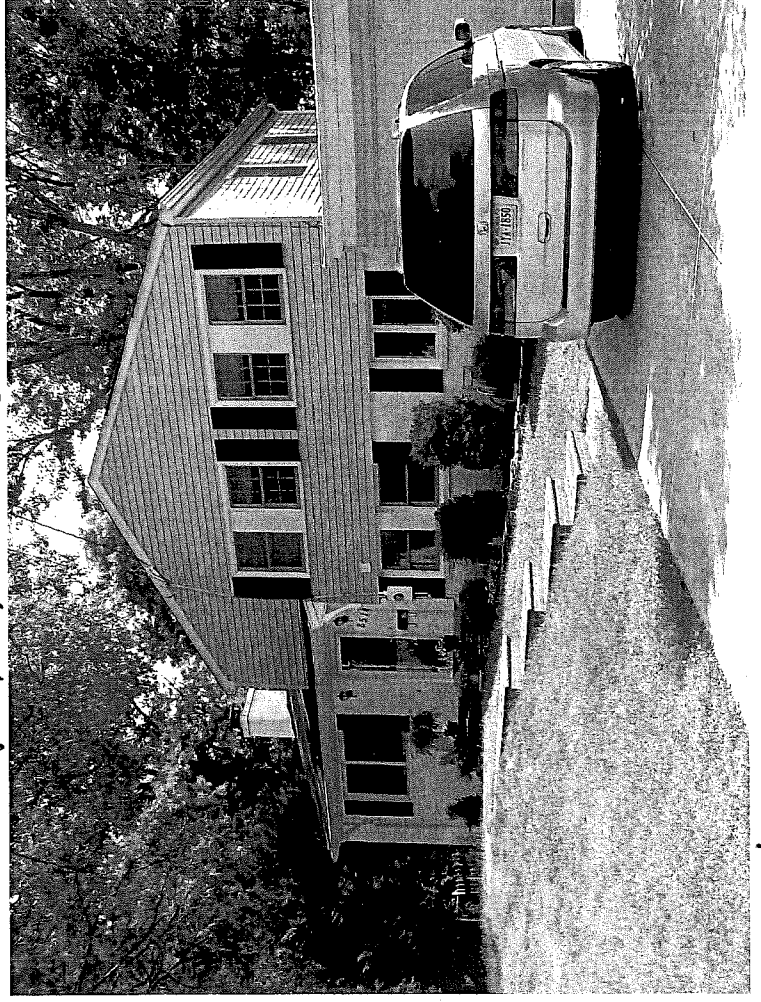
CERTIFIED LAND SURVEYOR



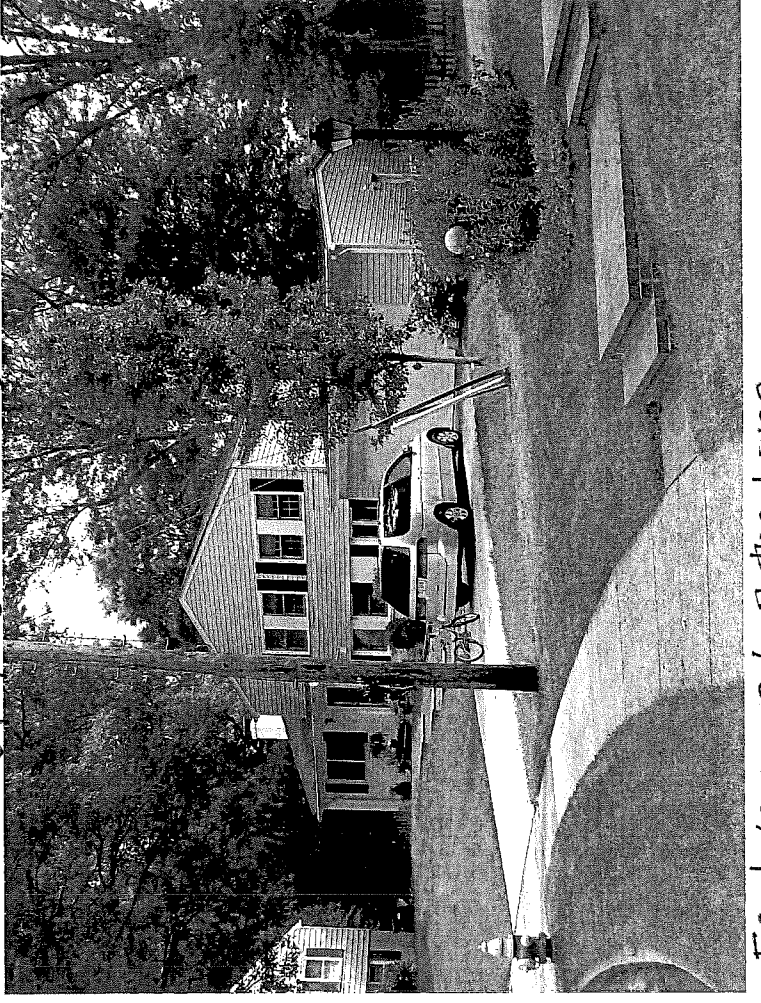
Front of property... and looking to the left



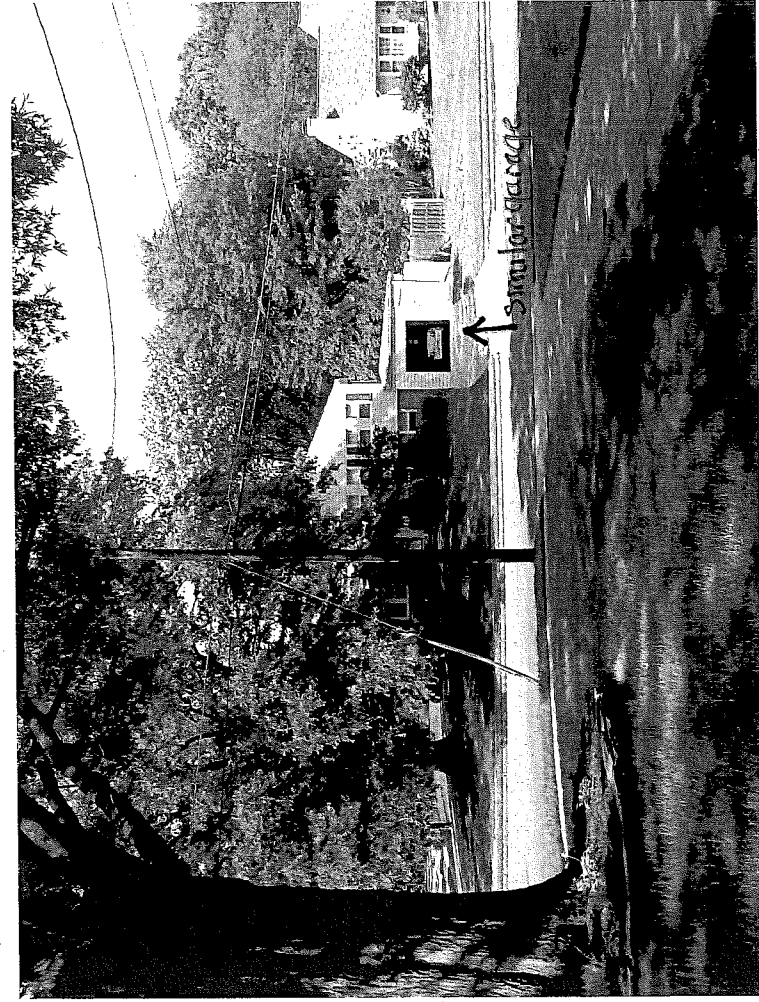
Front of property... and looking to the right



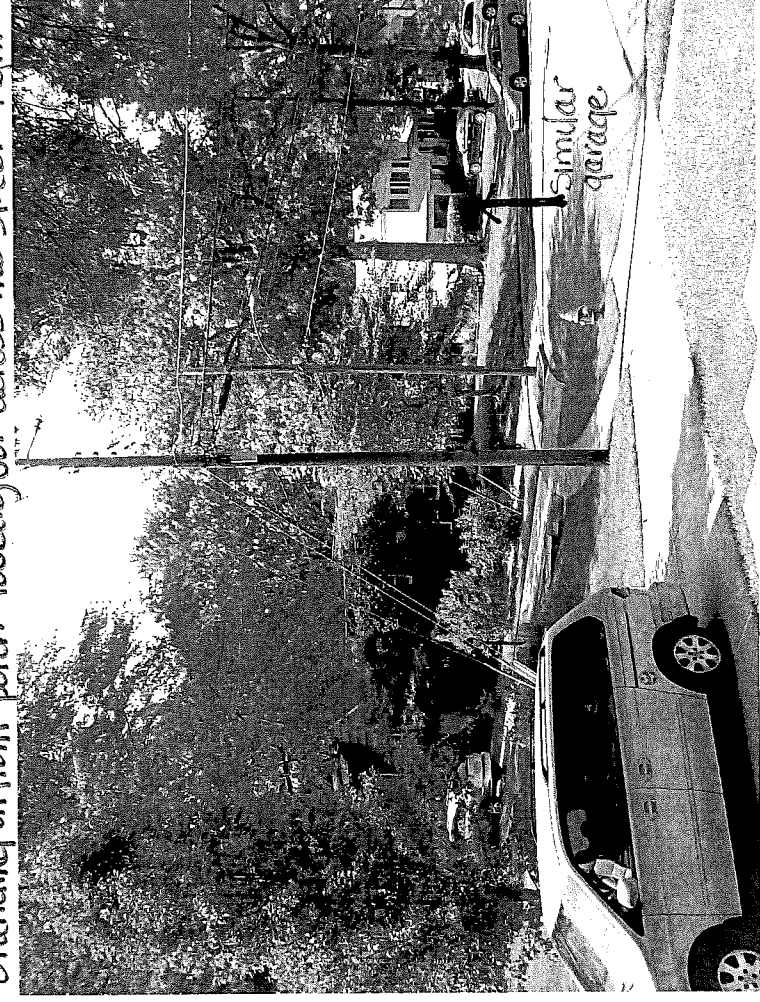
Front of the house



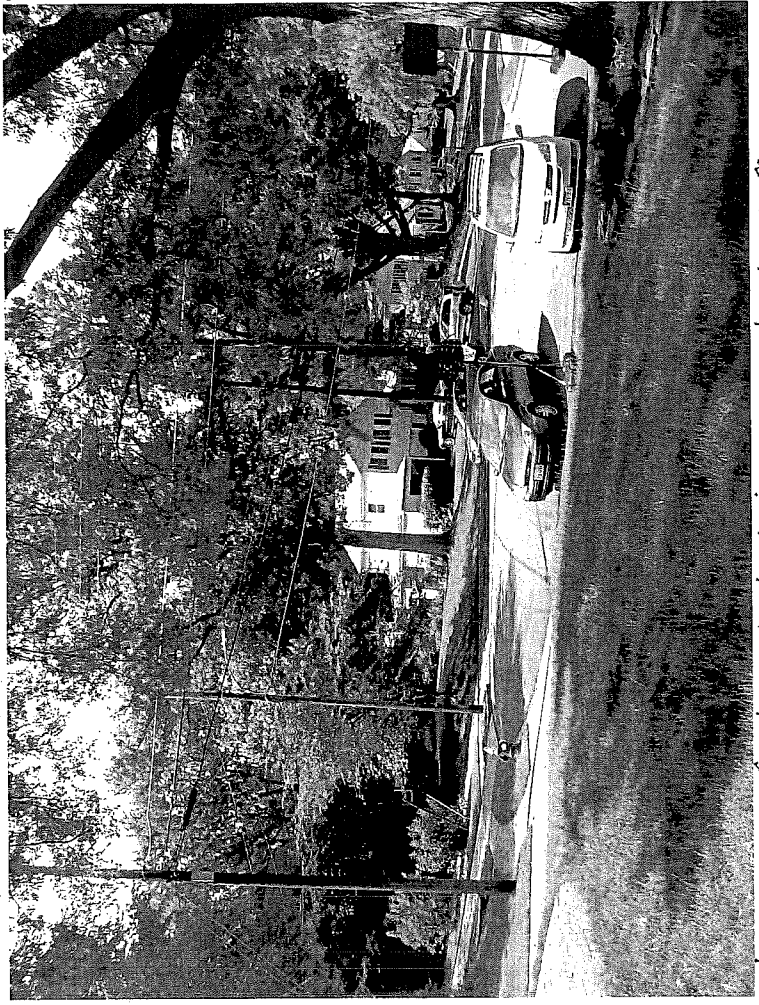
Front /garage side of the house.



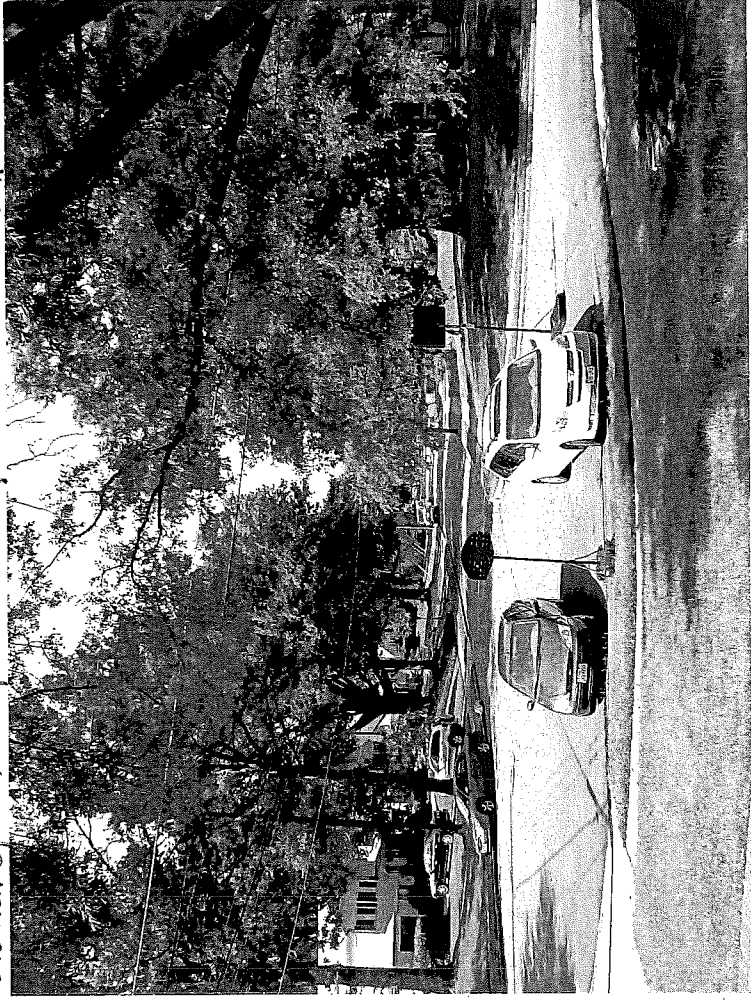
Standing on front porch - looking out across the street - right



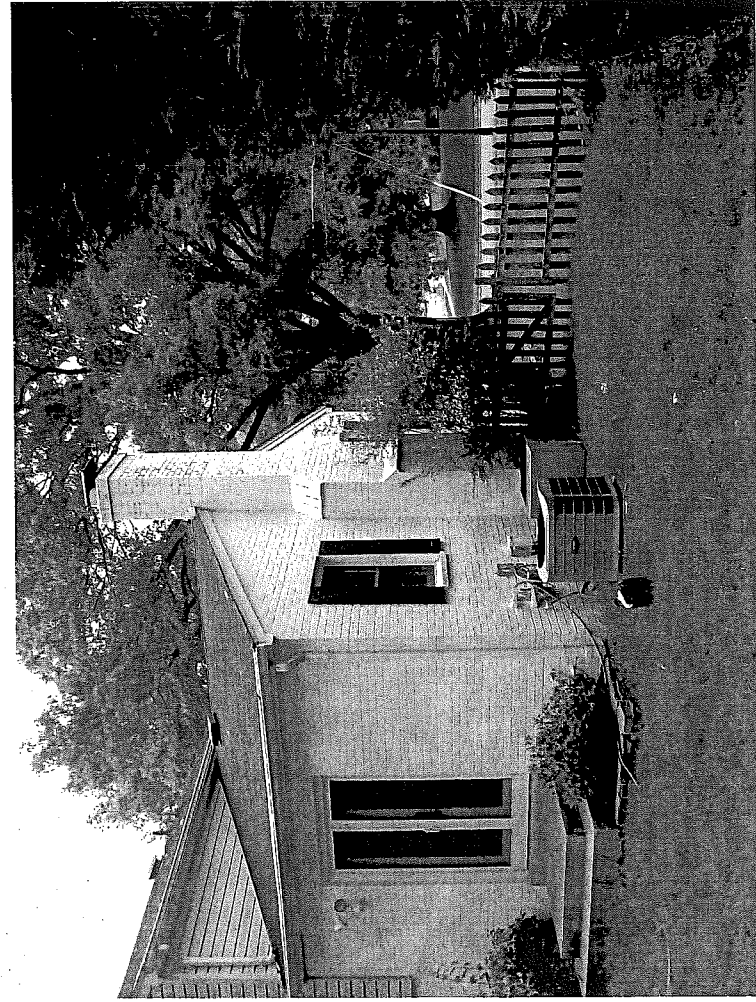
Similar - looking across street - left



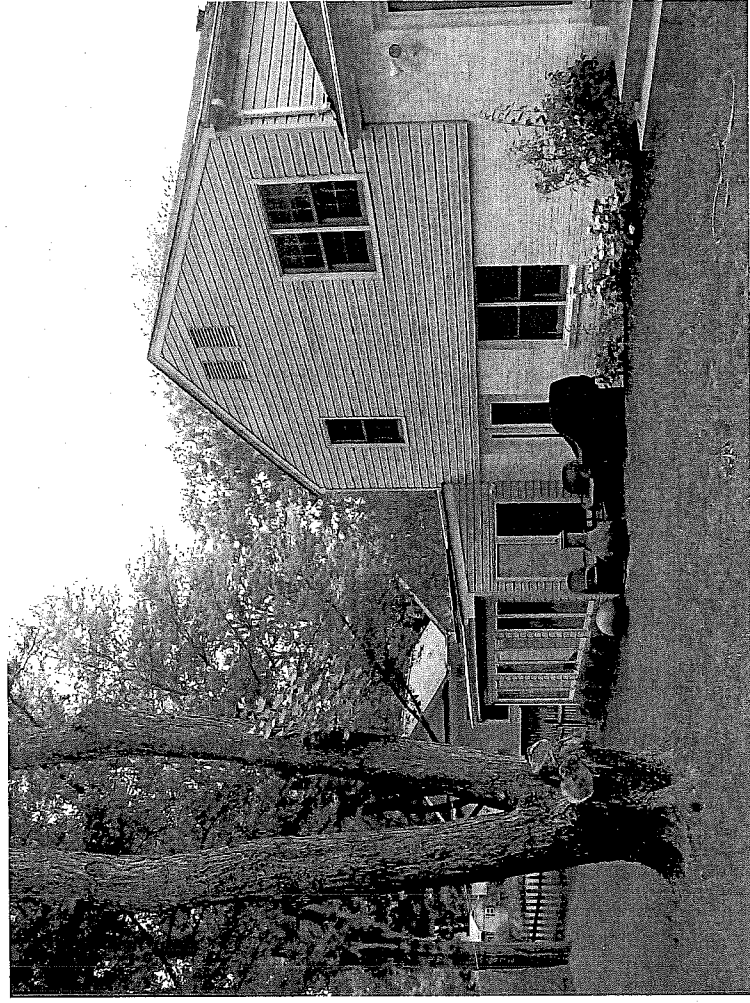
Standing on front porch - looking across street - left



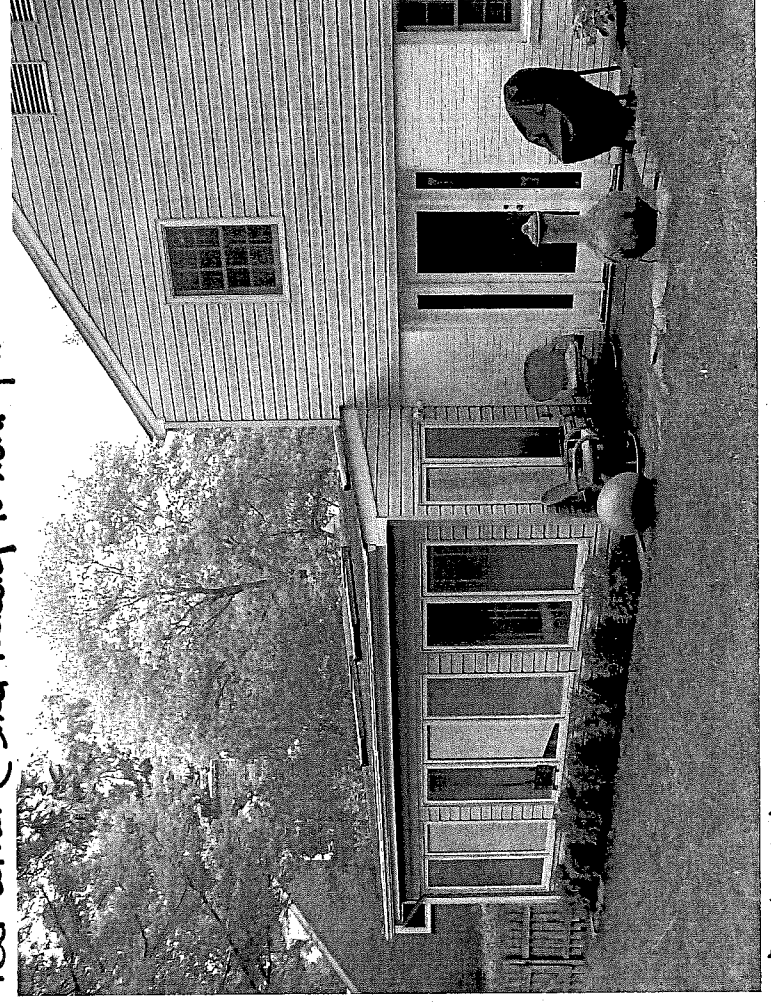
Standing on front porch - looking straight out - down Silver Pl.



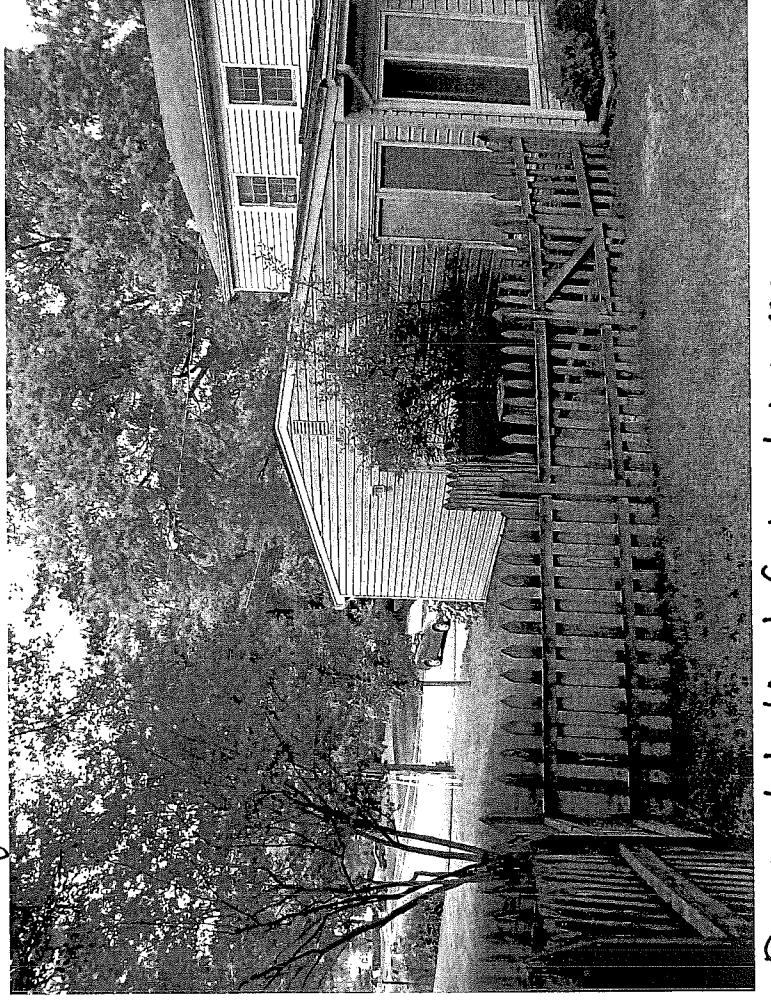
rear corner @ shed looking to front yard



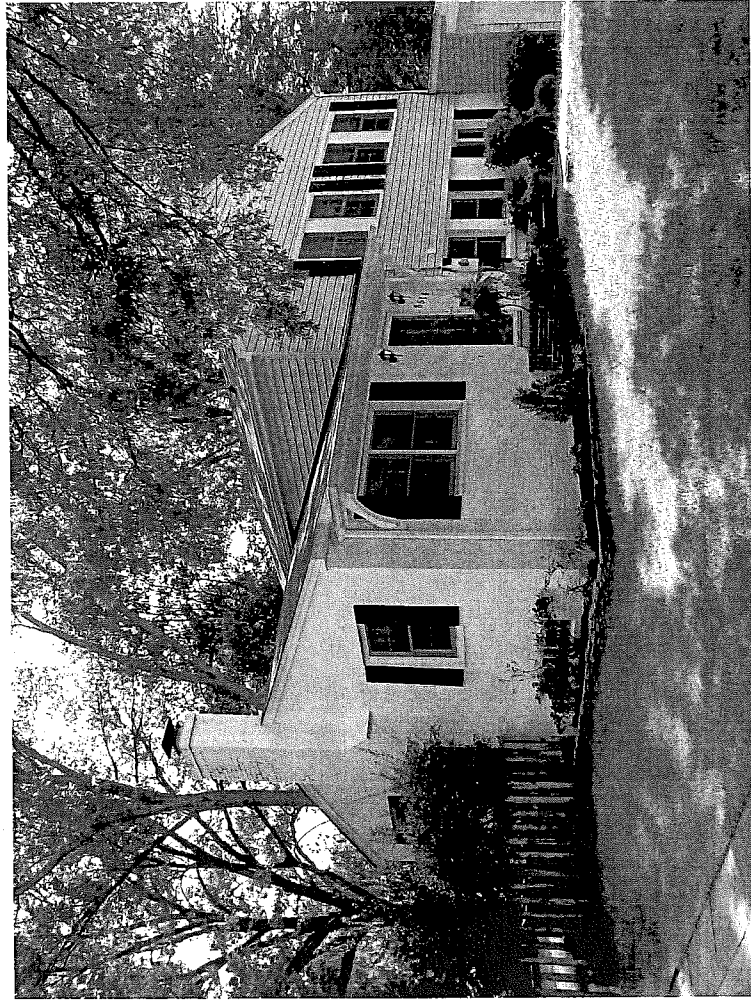
Back of house



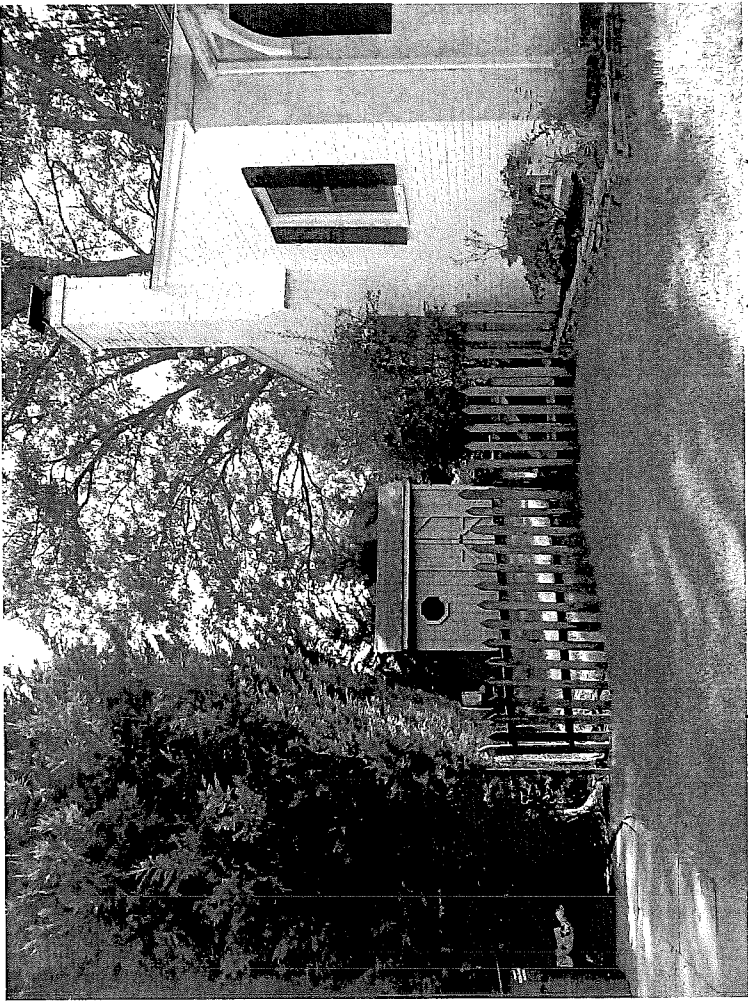
Front on white.



Rear yard looking to front yard + driveway.



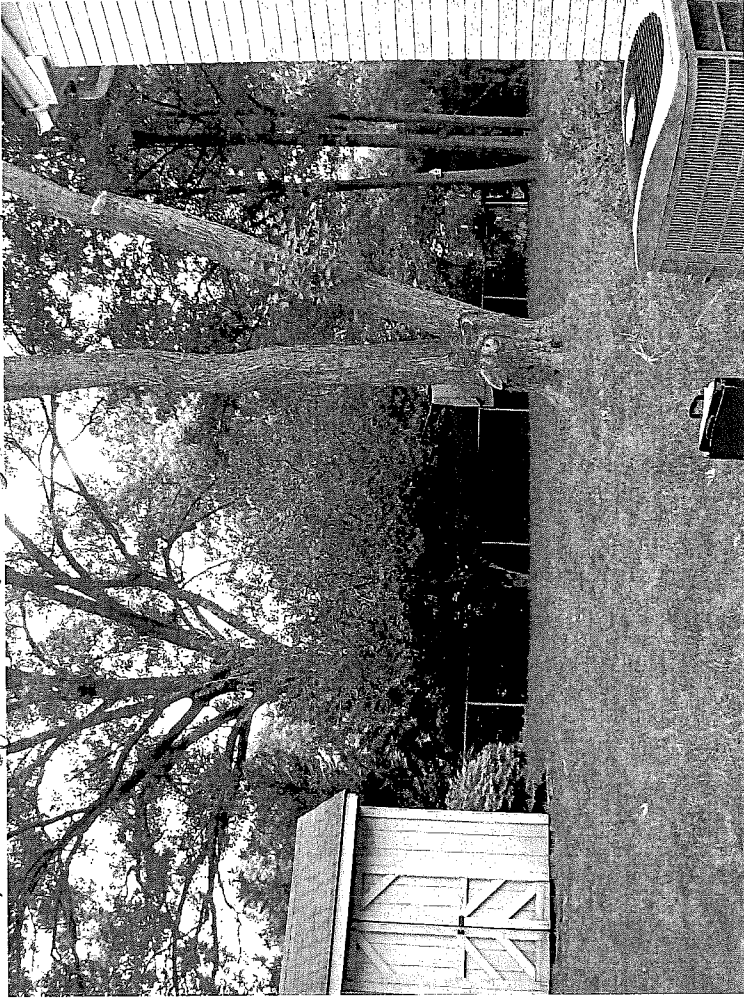
front / left side of house.



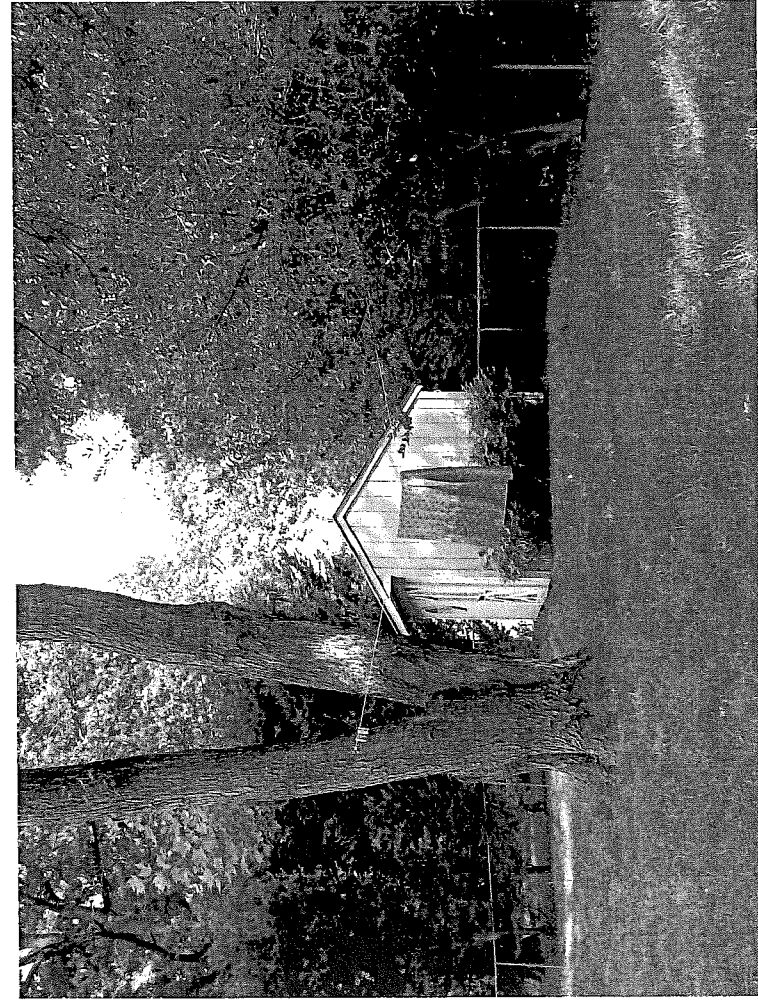
left side of house - looking into the backyard + shed



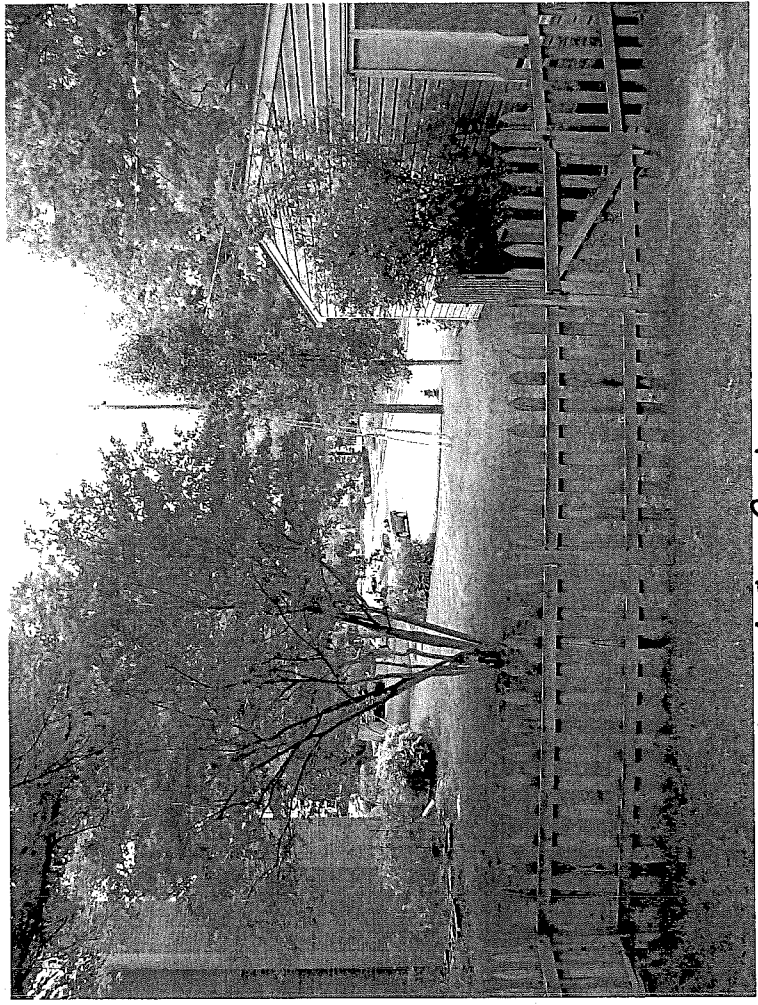
shed sitting in rear corner of lot



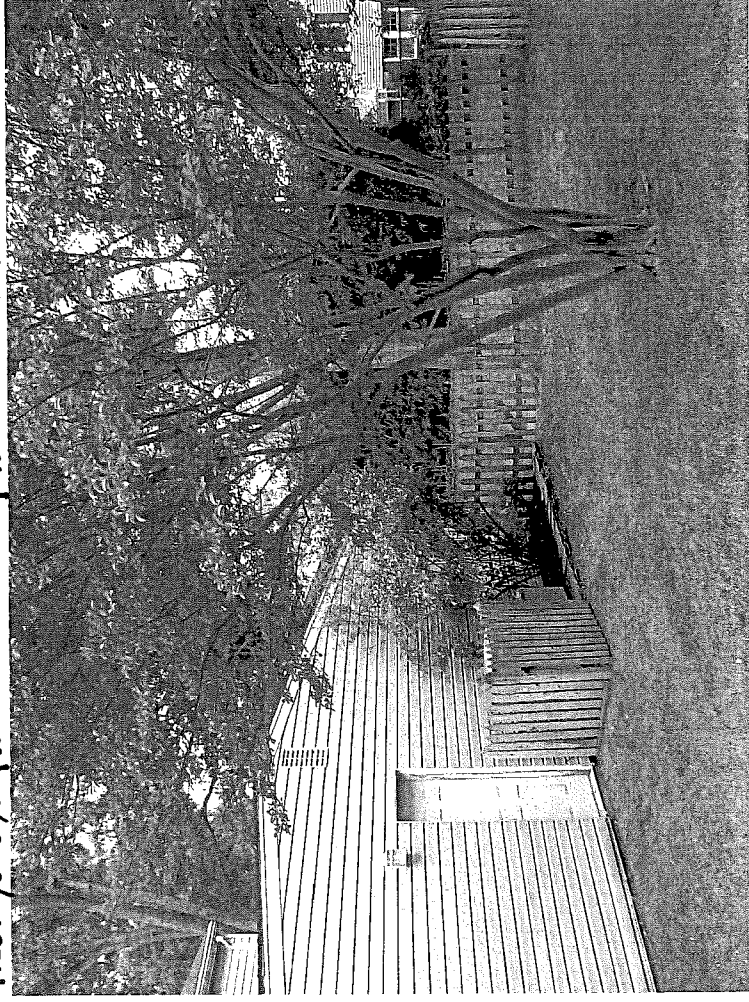
Backyard - flower & vegetable garden



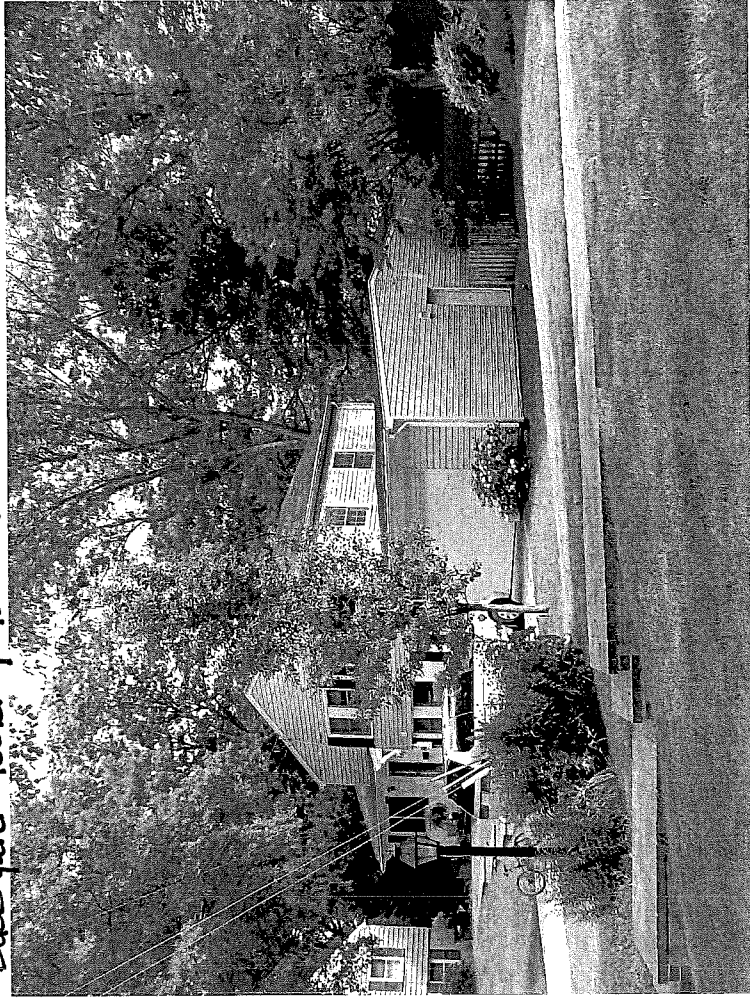
Rear yard, right corner looking towards shed



Back yard - looking to the front



Side yard showing garage



Side yard showing garage

DESCRIPTION OF THE APPLICATION

The applicant requests approval of a special permit for a reduction to minimum yard requirements based on an error in building location to permit 1) garage addition to remain 8.0 feet from the western side lot line and 2) an accessory storage structure to remain 4.0 feet from the eastern side lot line and 2.4 feet from the rear lot line. The accessory storage structure measures 9.1 feet in height and approximately 100 square feet in area. The single-story garage addition measures approximately 750 square feet in area.

	Structure	Yard	Min. Yard Req.*	Structure Location	Amount of Error	Percent of Error
Special Permit #1	Addition (Garage)	Side	12.0 feet	8.0 feet	4.0 feet	33%
Special Permit #2	Accessory Storage Structure	Side	12.0 feet	4.0 feet	8.0 feet	67%
Special Permit #2	Accessory Storage Structure	Rear	25.0 feet	2.4 feet	22.6 feet	90%

*The minimum required side yard in the R-3 District is 12 feet, and the minimum required rear yard in the R-3 District is 25 feet.

EXISTING SITE DESCRIPTION

The subject site measures 7,200 square feet in area and is zoned R-3. The site is developed with a split level, brick and frame single family detached dwelling in a cul-de-sac which was built in 1959. At the front of the house, there is a concrete driveway which terminates at a garage, and there is a sunroom at the rear of the garage. A brick walkway with steps connects the driveway to the front of the house. There is a small paved brick patio at the rear of the house, and the rest of the rear yard is landscaped with grass, shrubs and trees. In the southeast corner of the site, there is a wood storage shed, measuring 9.1 feet in height and approximately 100 square feet in area. Chain link and wood picket fencing, approximately 4 feet in height, surround the rear yard.

CHARACTER OF THE AREA

	Zoning	Use
North	R-3	Single Family Detached Dwelling

South	R-3	Single Family Detached Dwelling
East	R-3	Single Family Detached Dwelling
West	R-3	Single Family Detached Dwelling

BACKGROUND

The house was originally constructed in 1959, and on October 24, 1988, a building permit was issued to enlarge an existing carport, as well as add a new roof to the carport and adjoining screened porch. However, there is no record of a building permit being issued for the enclosure of the carport into a garage. The garage has been taxed since 2000, according to Department of Tax Administration records, and the Zoning Administration Division determined that the garage is not vested (see Appendices 4 and 5). The applicant states that the garage and shed were in place when he purchased the property in 2003, and aerial imagery from 2002 confirms the location of the shed at that time.

A copy of the submitted special permit plat titled "House Location Survey, Lot 14, Block 11, Section 4, Waynewood" prepared by Larry N. Scartz, dated August 29, 2003 and revised and sealed though January 20, 2012 by Rebecca L.G. Bostick, is included at the front of the staff report.

Following adoption of the current Ordinance, the BZA heard the following variance applications in the vicinity of the application parcel:

- Variance VC 2000-V-096 was approved on October 17, 2000 for Tax Map 102-4 ((5)) (11) 20, zoned R-3 at 8517 Culver Place, to permit construction of an addition 3.0 feet from the side lot line.
- Variance VC 2000-V-140 was approved on February 6, 2001 for Tax Map 102-4 ((5)) (18) 8, zoned R-3 at 1209 Priscilla Lane, to permit construction of an accessory structure 5.0 feet from the side lot line and eave overhang 5.0 feet from the rear lot line.
- Variance VC 87-V-008 was approved on December 16, 1988 for Tax Map 102-4 ((5)) (16) 3, zoned R-3 at 1204 Croton Drive, to permit construction of a carport addition 4.61 feet from the side lot line.
- Variance VC 92-V-053 was denied on November 4, 1992 for Tax Map 102-4 ((5)) (15) 8, zoned R-3 at 8414 Crossley Place, to permit construction of a detached garage 2.0 feet from the side lot line and 2.0 feet from the rear lot line.
- Variance VC 93-V-061 was denied on October 20, 1993 for Tax Map 102-4 ((5)) (15) 8, zoned R-3 at 8414 Crossley Place, to permit construction of a carport 3.6 feet from the side lot line.

- Variance VC 95-V-116 was approved on February 14, 1996 for Tax Map 102-4 ((5)) (3) 7, zoned R-3 at 8419 Doyle Drive, to permit construction of an addition 10.3 feet from the side lot line.
- Variance Amendment VA 95-V-116 was approved on December 11, 1996 for Tax Map 102-4 ((5)) (3) 7, zoned R-3 at 8419 Doyle Drive, to amend VC 95-V-116 to permit an enlargement and increase in height of the previously approved structure 10.3 feet from the side lot line and to permit an addition 9.5 feet from the side lot line.
- Variance VC 97-V-104 was approved on January 21, 1998 for Tax Map 102-4 ((5)) (8) 18, zoned R-3 at 1102 Croton Drive, to permit construction of a carport 3.5 feet from the side lot line.

ZONING ORDINANCE REQUIREMENTS

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- Provisions for Approval of Reduction of the Minimum Yard Requirements Based on an Error in Building Location (Sect. 8-914)

This special permit is subject to Sects. 8-006, 8-903 and 8-914 of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 6. Subject to development conditions, this special permit must meet these standards.

CONCLUSION

If it is the intent of the BZA to approve this application, staff suggests the BZA condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report.

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Vested Rights Determination dated August 19, 2011
5. Vested Rights Determination dated December 14, 2010
6. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2011-MV-104

February 8, 2012

1. This special permit is approved for the location and size of the garage addition and accessory storage structure as shown on the plat prepared by Larry N. Scartz, dated August 29, 2003 and revised and sealed though January 20, 2012 by Rebecca L.G. Bostick, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections for the garage addition shall be diligently pursued and obtained within six months of final approval of this application.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Application No.(s): SP 2011-MV-104
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/5/11
 (enter date affidavit is notarized)

I, ROBERT DUNN, do hereby state that I am an
 (enter name of applicant or authorized agent)

(check one) ☒ applicant
☐ applicant's authorized agent listed in Par. 1(a) below

112613

and that, to the best of my knowledge and belief, the following is true:

- 1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS**, and **LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE**,** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(**NOTE:** All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
ROBERT J DUNN	8514 Culver Place Alexandria VA 22308	owner
TRACY B DUNN	↓	owner

(check if applicable) ☐ There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

Application No.(s): SP 2011-MV-104
(county-assigned application number(s), to be entered by County Staff)

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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/5/11
(enter date affidavit is notarized)

112613

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

DESCRIPTION OF CORPORATION: (check one statement)

- ☐ There are 10 or less shareholders, and all of the shareholders are listed below.
- ☐ There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- ☐ There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

(check if applicable) ☐ There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/5/11
(enter date affidavit is notarized)

112613

1(c). The following constitutes a listing*** of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

(check if applicable) ☐ The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. **General Partner, Limited Partner, or General and Limited Partner**)

(check if applicable) ☐ There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No(s): SP 2011-MV-104
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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/5/11
(enter date affidavit is notarized)

112613

1(d). One of the following boxes **must** be checked:

☐ In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

☒ Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.)

NONE 

(check if applicable) ☐ There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

Application No(s):

SP 2011-MV-104
(county-assigned application number(s), to be entered by County Staff)

Page Five

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 7/5/11
(enter date affidavit is notarized)

112613

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)

NONE RJD
TB

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) ☐ There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one)

☒ Applicant

☐ Applicant's Authorized Agent

ROBERT J DUNN

(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 5th day of July, 2011, in the State/Comm. of

District of Columbia County/City of Washington

Adrienne Riley
Notary Public, District of Columbia
My Commission Expires 1/1/2015

Notary Public

NOV 28 2011

Zoning Evaluation Division

Statement of Justification

8514 Culver Place, Alexandria, VA 22308

1. This special permit application is to correct an existing structure and shed location.

A reduction of a 12' side yard to 8' is requested for the garage. The structure (concrete floor, walls, and roof) is existing. Looking around adjacent homes on this street, this garage appears to be a standard garage addition to this style of house when it was built.

A reduction of the 12' side to 4' and of the 25' rear yard to 2.4' is requested for the location of the shed. The structure (100 SF) is 9.16' high- grade to peak of the roof.

There is no new addition planned; only making the existing structures legally correct.

2. Justification items A. – I.

A. This is a single family home.

B. There are no hours of operations.

C. There are no estimated number of patrons, etc.

D. There are no proposed number of employees, etc.

E. The traffic impact will not change from a normal household use.

F. General area will remain the same.

G. This house is a typical split level home with brick veneer and siding. There are no new proposed additions.

H. There are no toxic or hazardous substances which will be utilized, stored and disposed on the site.

I. This is a typical suburban home which complies with zoning ordinances except for a corner of the garage and a shed location. There are no changes to the existing.

8-914- Provisions for Reduction to the minimum yard requirements based on error in building location.

8-914.2

2.A The error exceeds 10% of the side yard measurement. The garage: The side yard set-back line is on a diagonal so it is just a front corner of the garage that sits over the set-back. The shed was set back in the corner of the lot prior to the purchase of the property.

2. B. Both the garage and the shed are existing conditions when the Owners bought the property in 2003. Based on several homes on this street, this garage was a typical addition or perhaps an extra with the house when it was originally built. In this case, the side set-back limits is on a diagonal which intersects with the front corner of the garage. Also the shed was set in the corner of the back yard which also appears typical in this neighborhood. Sitting over the building set-back was an unknown condition when the house was purchased.

2.C. As this has been an existing location for a long time, such reduction will not impair the purpose of this ordinance.

2.D This reduction is not detrimental to the use and enjoyment of other properties in the immediate vicinity.

2.E This reduction will not create an unsafe condition with respect to both other property and public streets.

2.F To force compliance with the minimum yard requirements would create a hardship upon the Owner. They purchased this house with a garage and removing the front corner would first be costly and second make the garage difficult, if not impossible, to use. The shed is well landscape-screened from adjacent owners. With the small backyard, there is not a good place within the set-backs for this shed.

2.G This reduction will not result in an increase in density or FAR from what is permitted.

SP 2011



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Via Regular Mail

August 19, 2011

Rob Dunn
8514 Culver Place
Alexandria, Virginia 22308

RE: Sect. 15.2-2307 of the Code of Virginia Determination
8514 Culver Place
Waynewood, Section 4, Block 11, Lot 14
Tax Map Ref.: 102-4 ((5)) (11) 14
Zoning District: R-3

Dear Mr. Dunn:

This letter is in response to your letter dated July 27, 2011, which was received August 2, 2011 regarding the property located at 8514 Culver Place, identified as Tax Map #102-4 ((5)) (11) 14, which is zoned R-3 and is developed with a single family detached dwelling with attached garage, brick patio, and shed. You are requesting a vested rights determination for the attached garage and shed.

Minimum yard requirements for dwellings in the R-3 District (applicable to the attached garage) are for the front yard 30 feet, for side yards 12 feet, and for the rear yard 25 feet. Accessory storage structures (sheds) which exceed 8.5 feet in height may not be located within the minimum required side yard (in this case 12 feet), and must be located a distance at least equal to or greater than the height of the structure from the rear lot line, which in this case is 9.2 feet. According to our records, the dwelling was constructed in 1959. There are no building permits in file for the enclosure of a carport into a garage, or for the shed. You submitted an annotated survey entitled "House Location Survey, Lot 14, Block 11, Section 4, Waynewood" which was prepared by Larry N. Scartz, Certified Land Surveyor and dated August 29, 2003. The survey shows that the garage is located 8.9 feet with eave 8 feet from the (western) side lot line, which does not meet the minimum zoning ordinance requirement of 12 feet. In addition, the shed is located 4 feet from the (eastern) side lot line and 2.6 feet from the rear lot line, which does not meet the zoning ordinance requirement of 12 feet from the side lot line and 9.2 feet from the rear lot line.

Under §15.2-2307 of the *Code of Virginia*, if (a) local government has issued a building permit, the structure was constructed in accordance with the building permit, and a certificate of occupancy was issued, or (b) the owner of the building has paid taxes for the structure for

Department of Planning and Zoning

Zoning Administration Division

Ordinance Administration Branch

12055 Government Center Parkway, Suite 807

Fairfax, Virginia 22035-5505

Phone 703-324-1314 FAX 703-803-6372

www.fairfaxcounty.gov/dpz/

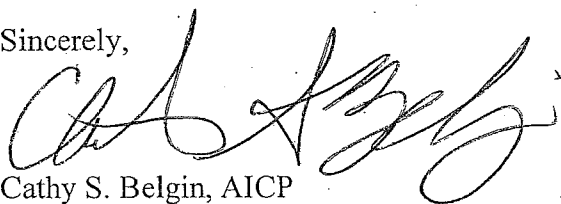
Mr. Rob Dunn
August 19, 2011
Page 2

more than 15 years, the structure is not illegal and may remain. In this instance, the garage has been shown in the real estate assessment records since 2001, and was previously listed as a carport. Additionally, the shed is not listed in the real estate assessment records. As such, §15.2-2307 is not applicable for either structure. Please see the attached letter dated December 14, 2010 where the same vested rights determination was already previously issued regarding the garage.

You state that you have already begun the application process through the Zoning Evaluation Division for a special permit for an error in building location for these structures. Please note that if approval of these requests is not granted by the Board of Zoning Appeals to permit the structures to remain in their current location, the structures must be moved and/or modified to meet the zoning ordinance requirements, otherwise it may impact your ability to obtain future permits for the property.

Although this is not the response you had hoped for, I trust this correspondence adequately responds to your request. If you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,



Cathy S. Belgin, AICP
Senior Assistant to the Zoning Administrator

CSB/

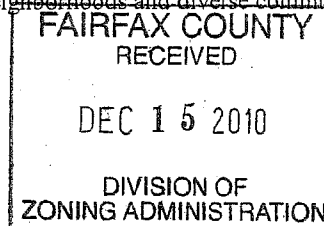
cc: Gerald W. Hyland, Supervisor, Mount Vernon District
Eileen M. McLane, Zoning Administrator
Lorrie Kirst, Deputy Zoning Administrator for Ordinance Administration Branch
Diane Johnson-Quinn, Deputy Zoning Administrator for
Zoning Permit Review Branch
✓ Virginia Ruffner, Zoning Evaluation Division
Janet E. Coldsmith, Director, Real Estate Division, DTA

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County



December 14, 2010

Mr. Timothy Shoemaker
Legacy Sundecks Inc.
164 Fox Chase Drive
Front Royal, VA 22630

RE: Sect. 15.2-2307 of the Code of Virginia Determination for Wood Deck
8514 Culver Place
Waynewood; Section 4, Block 11, Lot 14
Tax Map Ref.: 102-4 ((5)) (11) 14
Zoning District: R-3

Dear Mr. Shoemaker:

This is in response to your email dated December 1, 2010, requesting a determination that the attached garage, which is encroaching into the minimum required side yard of the referenced property is vested pursuant to Section 15.2-2307 of the Code of Virginia. Section 15.2-2307 states:

Notwithstanding any local ordinance to the contrary, if (i) a local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit thereof, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period in excess of 15 years, a zoning ordinance may provide that the building or structure is nonconforming, but shall not provide that such building or structure is illegal and shall be removed solely due to such nonconformity. Further, a zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code.

It is my understanding that you have filed a Building Permit Application #103340051 to build a screen porch. The property is zoned R-3 Residential District, Three Dwelling Units/Acre and currently contains an existing single-family detached dwelling on a 10,614 square foot lot. The R-3 District has a minimum side yard requirement of 12 feet.

According to our records, the 1,034 square foot house was constructed in 1959. There is no evidence in our files that a Building Permit was issued to build the carport and the screened porch but on October 24, 1988, the County issued Building Permit #88298B1200 authorizing the



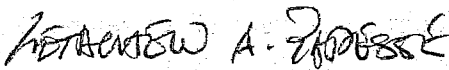
8514 Culver Place
December 14, 2010
Page 2

enlargement of the carport and the addition of a sloped roof over the existing carport and screened porch. In addition, there is no evidence in our files that a Building Permit has ever been issued to convert the carport to garage. The Department of Tax Administration records do not indicate that the garage has been taxed for at least 15 years. The records show that the garage first appeared on the tax records in 2000 and therefore it is not vested pursuant to Sect. 15.2-2307 of the Code of Virginia and it must either be removed or remodeled to meet the Zoning Ordinance requirements.

Alternatively, a reduction of the minimum required yard special permit or an error in building location special permit could be sought from the Board of Zoning Appeals (BZA). All special permits require the submission of an application, plat and fee; notification of adjacent property owners; and a public hearing before the BZA. Information pertaining to the special permit process is available from the Zoning Evaluation Division by calling 703-324-1290.

I trust this letter adequately responds to your request. Should you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,



Getachew A. Tadesse
Assistant to the Zoning Administrator

cc: Gerald W. Hyland, Supervisor, Mount Vernon District
Eileen M. McLane, Zoning Administrator
Michelle M. O'Hare, Deputy Zoning Administrator, Ordinance Administration Branch
✓ Diane E. Johnson-Quinn, Deputy Zoning Administrator, Zoning Permit Review Branch

Muir, Amy M.

From: Tim Shoemaker [legacytim@comcast.net]
Sent: Wednesday, December 01, 2010 1:06 PM
To: DPZ ORDADMIN
Cc: tbb43@hotmail.com
Subject: Request for Vested Rights Determination

RECEIVED
Dept. of Planning & Zoning

DEC 01 2010

Subject: Mr & Mrs Dunn Residence
8514 Culver Place
Alexandria, Va. 22308
571-212-3658
Tax Map Ref.: 102-4 ((5))(11) 14
Zoning District: R-3

Zoning Administration Div.

2010-1068

From: Timothy Shoemaker
Agent for Mr & Mrs Dunn
Legacy Sundecks Inc
164 Fox Chase Dr
Front Royal, Va. 22630
703-474-0673

To Whom in may concern: On 11/30/10 I came to FF County to obtain a permit for a screened porch to be built for Mr & Mrs Dunn, after going through the first 3 stations to pull the permit (including paying the cashier) - I found myself at Zoning where an issue regarding their garage was presented. The issue is that sometime between 1959 and 1988 a past owner of the property had enclosed the original carport thus making it into an attached garage. The side setback for a carport is 5' and for a garage is 12'. The Dunn's bought the property in 2003 and on their title search before closing there were no blemishes found regarding the property or garage. We believe that this garage should be "grandfathered" and approved by FFC which would allow for future permitting. It was they're desire to begin construction on the screened porch within the first week of December to allow for family in January. Your immediate attention to this matter will be appreciated.

Sincerely

Timothy Shoemaker



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Vested Rights Determination under §15.2-2307 of the Code of Virginia

Property Tax Map Number:	102-4 ((5)) (11) 14
Property Address:	8514 Culver Place
Requestor's Name:	Mr. Timothy Shoemaker
Requestors Address: (if different than above)	164 Fox Chase Drive, Front Royal, VA 22630
Requestor's Phone Number:	703-474-0673
Current Zoning:	R-3
Magisterial District:	Mount Vernon
Subdivision Name/Section/Block/Lot No.:	Waynewood, Section 4, Block 11, Lot 14

Written Description of Structure that may be vested under §15.2-2307 of the Code of Virginia (See Attached Instruction Sheet)

The structure in question is an attached garage, which was originally built as a carport. The garage is located at 40.3 feet from the front lot line and 8.9 feet from the side lot line. The locations are obtained from a house location plat on file. A copy of the plat is attached.

There is no evidence of a building permit having been issued in our records for the garage.

Department of Tax Administration assessment records do not indicate that the garage has been taxed for the last 15 years.

Background Summary (check all that are applicable):

- ☐ A Building Permit has been issued.
- ☐ No evidence of a Building Permit having been issued.
- ☐ A Non-Residential Use Permit/Residential Use Permit has been issued or, when a Non-RUP/RUP is not required, evidence that the structure(s) has passed final inspection.
- ☐ Department of Tax Administration records indicate that the structure(s) has been taxed for at least 15 years.
- ☒ Department of Tax Administration records do not indicate that the structure(s) has been taxed for at least 15 years.

Department of Planning and Zoning
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12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505
Phone 703-324-1314 FAX 703-803-6372
www.fairfaxcounty.gov/dpz/



Staff Determination:

- ☐ §15.2-2307 of the Code of Virginia is applicable and the structure(s) may remain; however, the structure(s) must be brought into compliance with the Virginia Uniform Statewide Building Code. The structure may not be replaced or enlarged unless the replacement or expansion complies with all regulations of the district in which located.
- ☐ §15.2-2307 of the Code of Virginia is applicable for the structure and the structure(s) may remain; however, §15.2-2307I is not applicable for the use of the structure. A separate letter explaining the status and use of the structure(s) will be issued.
- ☒ §15.2-2307 of the Code of Virginia is not applicable. A separate letter explaining the status of the structure(s) will be issued.

Reviewer's Signature: _____

RETARDED A. JONES

Date: 12/14/10

Zoning Administration Division
Department of Planning and Zoning

cc: Janet E. Coldsmith, Director, Real Estate Division, DTA
Eileen M. McLane, Zoning Administrator
Michelle M. O'Hare, Deputy Zoning Administrator, Ordinance Administration Branch
Diane Johnson-Quinn, Deputy Zoning Administrator, for Zoning Permit Review Branch

ZONING ORDINANCE PROVISIONS

8-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903 Standards for all Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.

2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
 - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of well and/or septic field.
 - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.

J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.

K. Seal and signature of professional person certifying the plat.

In addition, the application shall contain a statement of justification explaining how the error in building location occurred and any supportive material such as aerial photographs, Building Permit applications, County assessments records, a copy of the contract to build the structure which is in error, or a statement from a previous owner indicating how the error in building location occurred.

2. The BZA determines that:

A. The error exceeds ten (10) percent of the measurement involved, and

B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and

C. Such reduction will not impair the purpose and intent of this Ordinance, and

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

E. It will not create an unsafe condition with respect to both other property and public streets, and

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.

4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.

5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

8-922 Provisions for Reduction of Certain Yard Requirements

The BZA may approve a special permit to allow a reduction of certain yard requirements subject to all of the following:

1. Only the following yard requirements shall be subject to such special permit:
 - A. Minimum required yards, as specified in the residential, commercial, industrial and planned development districts in Articles 3, 4, 5 and 6, provided such yards are not subject to proffered conditions or development conditions related to yards and/or such yards are not depicted on an approved conceptual development plan, final development plan, development plan, special exception plat, special permit plat or variance plat.
 - B. Yard regulations for pipestem lots and lots contiguous to pipestem driveways set forth in Sect. 2-416.
 - C. Accessory structure location requirements set forth in Sect. 10-104.
 - D. Regulations on permitted extensions into a minimum required yard as set forth in Sect. 2-412.

Approval of a reduction of yard requirements specified in Paragraphs A, B and C above shall not result in any yard that is less than fifty (50) percent of the requirement and shall not result in any yard of less than five (5) feet, as measured from the lot line to the closest point of the proposed structure.

Approval of a reduction of yard requirements specified in Par. D above shall not result in an extension that exceeds the applicable distances set forth in Sect. 2-412 by more than fifty (50) percent. Where no extension is permitted by the provisions of Sect. 2-412, the BZA shall not approve a special permit that results in a structure that extends into a minimum required yard by more than fifty (50) percent.

2. Such reduction shall not result in the placement of a detached accessory structure in a front yard where the placement of such accessory structure is not otherwise permitted in that yard.
3. This special permit shall only apply to those lots that contain a principal structure and use that complied with the minimum yard requirements in effect when the use or structure was established.
4. The resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first expansion request. The resulting gross floor area of any subsequent addition is limited to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion request, regardless of whether such addition complies with the minimum yard requirements or is the subject of a subsequent yard reduction special permit. If a portion of a single family detached dwelling is to be removed, no more than fifty (50) percent of the gross floor area of the existing dwelling at the time of the first yard reduction shall be removed. Notwithstanding the definition of gross floor area, as set forth in this Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.

5. The resulting gross floor area of an existing accessory structure and any addition to it shall be clearly subordinate in purpose, scale, use and intent to the principal structure on the site.
6. The BZA shall determine that the proposed development will be in character with the existing on-site development in terms of the location, height, bulk and scale of the existing structure(s) on the lot.
7. The BZA shall determine that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale of surrounding structures, topography, existing vegetation and the preservation of significant trees as determined by the Director.
8. The BZA shall determine that the proposed development shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and stormwater runoff.
9. The BZA shall determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. Specific factors to be considered include, but are not limited to, the layout of the existing structure; availability of alternate locations for the addition; orientation of the structure(s) on the lot; shape of the lot and the associated yard designations on the lot; environmental characteristics of the site, including presence of steep slopes, floodplains and/or Resource Protection Areas; preservation of existing vegetation and significant trees as determined by the Director; location of a well and/or septic field; location of easements; and/or preservation of historic resources.
10. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including, but not limited to imposition of a maximum gross floor area, floor area ratio, lot coverage, landscaping and/or screening requirements.
11. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. The location, dimension and height of any building, structure or addition, whether existing or proposed. In addition, for decks, the height of the finished floor above finished ground level.

- E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing and proposed structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of a well and/or septic field.
 - I. Existing and proposed gross floor area and floor area ratio.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. The location, type and height of any existing and proposed landscaping and screening.
 - L. Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
 - M. Seal and signature of professional person certifying the plat.
12. Architectural depictions of the proposed structure(s) as viewed from all lot lines and street lines to include building materials, roof type, window treatment and any associated landscaping and/or screening shall be provided.